IN THE HIGH COURT OF DELHI

Crl.M.C.No.3912-14/2005

Mr.Mangal Tula Dhar & Ors. ..... Petitioners
Through: Mr.Jitender Saini, Advocate

VERSUS

$ Mr.R.N.Choudhary & Ors. ..... Respondents
! Through: Mr.Baldev Malik, Adv. for State
None for the complainant

% DATE OF DECISION: 22.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J. (Oral)**
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1. The first respondent had instituted a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. As trial proceeded parties went in for negotiation. Complainant received 4 cheques in sum of Rs.45,000/- each from the petitioner and recorded a settlement in the following words:-

> "I, R.N.Chaudhary S/o Sh.R.D.Chaudhary, R/o 13 A Janta Flats, Hauz Khas, Kalu Sarai, New Delhi-110016,

have received the below mentioned cheques from Mr.M.Dhar, Director, Harate Cleaning Services Pvt. Ltd. R/o 14-C Vijay Mandal Enclave, Kalu Sarai, New Delhi -110016 in full and final settlement of my personal borrowing amount to him. Nothing else is not due from Mr.Dhar now:-

1. Ch.No.658803 dated 03.02.2004 for Rs.45,000/-.
2. Ch. No.658804 dated 03.03.2004 for Rs.45,000/-.
3. Ch.No.658806 dated 30.05.2004 for Rs.45,000/-.
4. Ch.No.658805 dated 30.04.2004 for Rs.45,000/-.

Total amount Rs.1,80,000/-
(Rupees One Lac Eighty Thousand Only)

On receipt of the above cheques withdraw my court case against Mr.Dhar. This settlement is subject to realization of all the above four cheques."

2. The cheques were encashed by the complainant but he turned around and did not withdraw the complaint. On 10.2.2005, learned Metropolitan Magistrate passed an order that settlement between the parties and receipt of payment by the complainant would not wipe out the offence.

3. Holding so, learned Trial Judge notified a date for framing of notice under Section 251 Cr.P.C.

4. Petitioner rushed to this Court praying that in view of the settlement between the parties the complaint filed by the first respondent deserves to be quashed.

5. In para 6 of the petition, petitioner has averred as under:-

> "6. That again the petitioners appeared before the learned Trial Court on 8th June and the fact of compromise between the petitioners and respondent No.1 was brought to the notice of the learned Trial Court as the compromise was already arrived at between the petitioner and respondent No.1 before the appearance of the petitioners in the learned Trial Court. This fact was recorded in the order sheet dated 8th June 2004. Copy of the order sheet dated 8th June 2004 is annexed herewith as Annexure-B and copy of the compromise letter is annexed herewith as Annexure-C."

6. Reply filed by the respondent to para 6 of the instant petition reads as under:-

> "6. That the contents of para No.6 of the petition are correct to the extent that the petitioners offered a
> settlement of accounts with the present respondent and they arrived at a compromise regarding the outstanding balance amount. It is submitted that the petitioners again with an ulterior motive promised the present respondent with a compensation amount because of harassment he has undergone due to continuous dishonour and presentation of the cheque and legal expenses incurred by him since the sending of legal notice till incurring expenses on filing of the complaint and attending of the date of hearing, the fact of which is suppressed by the petitioners before the trial court as well as before this Hon'ble Court. Rather the petitioners have levelled vague and false allegations against the present respondents without any basis and the reason of which is best known to them, hence the petitioners cannot claim their acquittal as a legal right."

7. The respondent has in categorical and unequivocal terms admitted that parties arrived at a settlement.

8. If that be so, I see no reason why complaint filed by

the respondent should continue.

9. It is not the case of the respondent that he arrived at a settlement under some bona fide mistake or that the settlement is a result of an inducement coercion or a threat. I additionally note that the respondent has received benefit under the settlement.

10. Before respondent resiles from the settlement he must restore the benefit which he has received under the settlement. I note that the respondent has not restored the benefit which he had received under the settlement.

11. In the decision reported as 2005 (1) JCC 83 *Mohd.Shamim & Ors. vs. Nahid Begum & Ors.* in a dispute between husband and wife where the wife received a benefit agreeing that she would join the husband in quashing of the FIR but later on resiled from the compromise, Hon'ble Supreme Court opined that the complaint filed by the wife had to be quashed notwithstanding consent not being given by her, for the reason she had taken benefit under a settlement.

12. The petition is accordingly allowed. Complaint filed by the first respondent against the petitioners is quashed.

August 22, 2007 **PRADEEP NANDRAJOG, J.**
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